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NOTIFICATION OF ZONING HEARING EXAMINER'S DECISION

DATE OF DECISION: May 5, 2006
HEARING EXAMINER: Rebecca A. Bryant
RE: Zoning Appeal Case No. 5525
APPLICANTS: Benjamin & Sara Bernstein
LOCATION: 1115 Emmorton Road, Bel Air
REQUEST: Special Exception to operate a health services and
medical clinic with 3 health professionals and
variance to allow a free-standing sign in the
RO District

Enclosed is an official copy of the Hearing Examiner's decision relative to the above referenced case.

The Hearing Examiner's decision shall become final **JUNE 5, 2006.**

This decision shall be considered a recommended opinion to the Harford County Council, sitting as The Board of Appeals, if a written request for Final Argument before the Harford County Council is filed by the close of business on above date by the Applicant, Applicant's Attorney, Opponents, People's Counsel, or a person aggrieved who was a party to the proceedings before the Hearing Examiner. In addition, any Board Member, upon written notice to the Council Administrator, may request final argument.

COUNTY COUNCIL OF HARFORD COUNTY

Barbara J. O'Connor
Council Administrator

Enclosure

cc: Applicant/Attorney; Opponents/Attorney; Adjoining Property Owners; People's Counsel;
Registered Hearing Attendees; Department of Planning and Zoning; Department of Law

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BOARD OF APPEALS CASE NO. 5525

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BEFORE THE

APPLICANTS: Benjamin & Sara Bernstein

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ZONING HEARING EXAMINER

REQUEST: Special Exception to operate a health services / medical clinic with 3 health professionals and a variance to allow a free-standing sign

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OF HARFORD COUNTY

HEARING DATE: April 5, 2006

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Benjamin and Sara Bernstein, are seeking a variance, pursuant to Section 219-17, Sections 219-13(B) and 219-5(B) of the Harford County Sign Code, to permit a freestanding sign, five (5) feet in height and nine (9) feet in width for a total area of forty-five (45) square feet, with a two (2) foot setback from the road right-of way, and a special exception, pursuant to Section 267-53(H)(9)(b) of the Harford County Zoning Code, to operate a health services and medical clinic with three health professionals in the RO District.

The subject property is located at 1115 Emmorton Road, Bel Air, Maryland 21014, in the Third Election District, and is more particularly identified on Tax Map 49, Grid 3C, Parcel 176. The property contains approximately 5.90 acres, and is zoned RO/Residential Office and R2/Urban Residential.

Dr. Benjamin Bernstein appeared and testified that he and his wife are the owners of the subject property. He and his family resided there until approximately one year ago. Dr. Bernstein is a medical dermatologist. His practice consists of two physicians, both dermatologists. He has operated his practice from the subject property for over thirty years. His partner has been in practice with him at that location for sixteen years. The property has been utilized as a health care facility or office building since the 1960's.

The Applicants are requesting a special exception to add a third physician to their medical practice, due to a confluence of current events. First, both Dr. Bernstein and his partner are approaching retirement age and want to reduce their work hours in hopes of eventually retiring. However, they have a very busy practice, and there is a great need for their services in the subject area. At present, there are only four dermatologists practicing in all of Harford County, and if, either Dr. Bernstein or his partner were to reduce their work hours this would cause hardship to their existing patients. In addition, the practice of dermatology is expanding to include ever increasing amounts of medical and cosmetic services. Nevertheless, there are presently no cosmetic dermatologists practicing in Harford County. This forces Harford County residents to travel outside the county to obtain cosmetic dermatology services.

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The Applicant and his partner, therefore, propose to hire a medical dermatologist with cosmetic experience to provide needed services to Harford County residents. This same individual would eventually take over their practices when they retire.

In 1980, the Board of Appeals (Case No. 2542) granted the Applicants permission to construct a freestanding sign on the property, which was then zoned R2. The property was rezoned RO in 1996. In 2001 the Board of Appeals, in Case No. 5151, granted Applicants permission to construct a larger sign, after advising them that their existing sign was actually located within the Emmorton Road right-of-way. Emmorton Road is now undergoing significant changes, as the road is being widened to include a center left turn lane to accommodate heavy traffic flow. A sidewalk is also being added. These changes have rendered the existing sign for Dr. Bernstein's medical practice almost invisible to passing traffic. The Applicants are therefore proposing to move that sign over several yards and place it perpendicular to the roadway to increase visibility.

With regard to the requested special exception, Dr. Bernstein indicated that he had read the Department of Planning and Zoning Staff Report, and was in agreement with proposed condition number one which would limit the medical clinic employees to three health care professionals.

With regard to the proposed variance, the Applicant testified that he is proposing to construct a freestanding sign on the subject property perpendicular to Route 924 (Emmorton Road) five (5) feet in height and nine (9) feet in width for a total area of forty-five square feet, with a two (2) foot setback from the road right-of-way. The sign will be ground lit in the same manner as the existing sign. The proposed sign will differ from the existing sign only in that the letters will be raised, and that the building will now be named Victory Professional Center after the closest cross street. The Applicant testified that these changes are necessary because many of his patients have difficulty seeing the existing sign, and frequently either drive past the office, or have difficulty locating it. He submitted a Petition containing the signatures of several hundred patients in support of the requested sign variance.

In response to cross examination by adjacent property owner Madeline Wright, Dr. Bernstein clarified that the third health care provider occupying the subject premises will be a medical doctor, and not his son, who is a veterinarian. He also indicated that the practice does not intend to extend its current hours, and that the site has adequate existing onsite parking. Finally, the Applicant testified that he intends to plant trees, likely arborvitae, along the property line between the subject property and Ms. Wright's property.

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Mr. Anthony McClune, Deputy Director, Department of Planning and Zoning appeared and testified regarding the findings of fact and recommendations made by that agency. Mr. McClune stated that the Department investigated the request, and visited both the property and surrounding neighborhood.

With regard to the requested variance, Mr. McClune indicated that the proposed sign would be very similar to the one previously approved by the Board of Appeals in Case No. 5151, except that the sign would be placed perpendicular to the road instead of parallel. According to the witness, the Department found the subject property to be unique based on topography and site characteristics. Route 924 is very wide at the subject location, and traffic moves fairly quickly in this area. In addition, the subject parcel slopes upward from the roadway, which makes it difficult to see the existing sign. Granting the requested variance would assist patients in locating the Applicant's medical office, thereby reducing confusion for motorists traveling along Maryland Route 924 in search of the facility. The witness stated that the purpose of the Harford County Sign Code is to assist patrons with locating business uses, and that pursuant to the terms of that Code the preferred placement for business signs is actually perpendicular to the roadway. Mr. McClune also stated that the proposed sign would have no adverse impact on either adjacent properties, or the intent of the Code. The Health Department indicated that it had no comment with regard to the subject Application in a letter dated February 17, 2006. (See Staff Report Attachment 14).

With regard to the Special Exception use requested pursuant to Section 267-53H(9)(b) of the Harford County Code, Mr. McClune testified that it would cause no adverse impact to adjoining properties. He based this opinion on the fact that the Applicant's medical clinic meets all Code requirements for the requested Special Exception. In addition, the proposed use is of a size and scale compatible with the neighborhood. The onsite parking is located to the side of the existing building, and over 200 feet back from Route 924. The Applicant has also agreed to install landscaping to reduce visibility by adjoining property owners. Mr.. McClune did indicate that the Department was adding a third recommended condition, namely that the Applicant be required to submit a landscaping plan to the Department of Planning and Zoning for approval.

The witness indicated that the Department had considered all provisions set forth in Section 267-9(I) in connection with the requested special exception and determined that the subject requests meet all criteria set forth therein. He testified that the addition of one physician to the Applicant's medical practice will have no adverse impact on either traffic, or adjoining properties, and will be consistent with the orderly growth of the neighborhood.

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The subject proposal is generally consistent with both accepted zoning and the Master Plan, and will have no adverse fiscal impact on the County, the environment or cultural or historical landmarks. Mr. McClune further testified that the subject property has more than adequate road frontage. The required building setback is slightly under 12 feet (1/3 of 35 feet) and the proposed setback will be only 2 feet. This does not, however, impair the intent of the sign ordinance, because the purpose of that provision is to enable businesses to have signs so that patrons can find them, and not to cause adverse impact to adjoining properties.

No witnesses appeared in opposition to the subject request.

CONCLUSION:

The Applicants, Benjamin and Sara Bernstein, are seeking a variance, pursuant to Section 219-17, Section 219-13(B) and 219-5(B) of the Harford County Sign Code, to permit a freestanding sign, five feet in height and nine feet in width for a total area of forty-five square feet, with a two foot setback from the road right-of way.

Section 219-17 of the Harford County Code provides:

“The Board may grant a variance from the provisions of this chapter if, by reason of the configuration or irregular shape of the lot or by reason of topographic conditions or other exceptional circumstances unique to the lot or building, practical difficulty or unnecessary hardship results. The Board shall, before granting the variance, make a written finding as part of the record that the conditions or circumstances described are unique to the lot or building, that the conditions or circumstances cause the difficulty or hardship and that the variance can be granted without impairment of the purpose and provisions of this chapter.”

Section 219-5(B) of the Harford County Sign Code provides:

Freestanding signs. A freestanding sign shall include any sign supported by uprights or braces placed upon the ground and not attached to any building. Business signs may be freestanding if the property has a minimum of forty (40) feet of road frontage. The sign area shall be calculated on the basis of one (1) square foot of sign for every foot of property road frontage. However, the maximum area of any freestanding sign shall not exceed two hundred (200) square feet. The setback measured to the edge of the sign shall be equal to one-third (1/3) of the required building setback. Unless otherwise provided herein, the maximum height allowed for any freestanding sign, is thirty-five (35) feet above the nearest public road grade.

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Section 219-13(B) of the Harford County Sign Code provides:

B. Residential/Office district (RO).

(1) The following signs shall be allowed:

- (1) One freestanding sign per parcel, which shall have a maximum of eight square feet in area, shall be no more than six feet in height and shall be placed perpendicular to the road; and
- (2) A wall sign for each use, which shall be attached only to the front of a building, shall be adjacent to the front entryway and shall be no larger than four square feet in area.

Based upon the testimony of Dr. Bernstein, the testimony of Mr. Anthony McClune, and the findings and recommendation of the Department of Planning and Zoning, the Hearing Examiner finds the subject property unique. The property fronts on Maryland Route 924, a heavily traveled roadway in the process of being widened to add a center turn lane. This, added to the fact that the topography of the parcel slopes upward from the roadway, decreases visibility of the existing sign for the Applicant's medical facility.

The Hearing Examiner finds that the aforesaid unique conditions or circumstances cause practical difficulty for the Applicants. The existing sign is not easily visible from MD Route 924. This causes Dr. Bernstein's patients difficulty in finding his office. The sign, therefore, needs to be repositioned in order to direct patients and potential to the facility and eliminate confusion for travelers along MD Route 924.

The Hearing Examiner Officer further finds that the granting of the requested variance will have no adverse impact on either adjoining properties or MD Route 924, and will not impair the intent of the Harford County Zoning Code, or the Harford County Sign Code. The proposed sign will differ only slightly from the existing sign, and will be moved only several feet from its existing location and placed perpendicular to the roadway to improve visibility. In addition, pursuant to the terms of that the Harford County Sign Code the preferred placement for business signs is perpendicular to the roadway.

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The Applicants are also seeking a special exception pursuant to Section 267-53(H)(9)(b) of the Harford County Zoning Code to operate a health services and medical clinic with three health professionals in the RO District.

Harford County Code Section 267-53(H)(9)(b) reads as follows:

Health services ad medical clinics.

These uses may be granted in the RO District, provided that:

- [1] The structure shall be of a size, scale and facade compatible with the surrounding residential neighborhood.
- [2] All parking shall be accommodated on the site in a manner compatible with the surrounding roads and uses, and a landscaped buffer yard ten feet wide shall be provided between the parking area and any adjacent residential lot.

Relevant general provisions of the Harford County Code pertaining to Special exception uses are set forth below.

Section 267-51 of the Harford County Code provides:

"Purpose.

Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1."

Section 267-52 of the Harford County Code states:

"General Regulations

- A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.
- B. A special exception grant of approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.

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- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof."

Section 267-91 of the Harford County Code sets forth the following conditions for consideration by the Board in connection with granting of special exception uses:

- I. Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:
 - (1) The number of persons living or working in the immediate area.
 - (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.
 - (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.

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- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.
- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.
- (10) The preservation of cultural and historic landmarks.

The Court of Appeals established the standard for granting special exception uses in the case of *Schultz v. Pritts*, stating :

"...[t]he special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. " (*Emphasis in original*) 291 Md. 1, 11, 432 A.2d 1319 (1981).

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The *Schultz* court further held that "the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." 291 Md. At 15, 432 A.2d at 1327; citing, *Anderson v. Sawyer*, 23 Md. App. at 624-25, 329 A. 2d at 724 (1974) and *Deen v. Baltimore Gas & Electric Co.*, 240 Md. 317, 330-31, 214 A.2d 146 (1965).

The Hearing Examiner finds that the Applicant s have met their his burden of proving that the requested special exception uses meets the standards and requirements prescribed by the Harford County Code. Harford County Code Section 267-53(H)(9)(b) allows special exceptions to be granted for health services and medical clinics in the RO District provided that the structure is of a size, scale and facade compatible with the surrounding residential neighborhood; parking is accommodated onsite in a manner compatible with the surrounding residential uses; and a landscaped buffer yard ten feet wide is provided between the parking area and any adjacent residential lot. The subject parcel is zoned RO. According to undisputed testimony offered by both the Applicant and the Department of Planning and Zoning, the property contains an existing building that was once used as a single family residence. In fact, the Applicant and his family occupied the top floor of the residence from 1979 until approximately one year ago. The structure is therefore of a size, scale and facade compatible with the surrounding residential neighborhood. Adequate onsite parking is located to the side of the existing building, and is over 200 feet back from Route 924. In addition, the Applicant has agreed to install fast growing evergreen trees along the property line between the subject parcel and the adjoining residential lot.

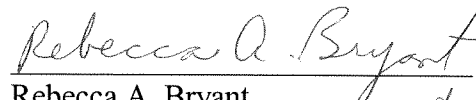
The Hearing Examiner adopts the findings of the Department of Planning and Zoning, that the proposed use meets all criteria set forth in Section 267-9I of the Harford County Code, can be conducted without adversely affecting the public interest, is in harmony with the general purpose and intent of the plan and would have no adverse impact on adjoining properties.

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For the reasons set forth above the Hearing Examiner recommends approval of the requested variance and special exception subject to the following conditions:

1. That the approval shall be limited to three physicians.
2. The Applicants shall obtain a permit for the new sign location.
3. The Applicant shall be required to submit a landscaping plan to the Department of Planning and Zoning for approval.

Date: May 5, 2006


Rebecca A. Bryant
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JUNE 5, 2006.